

OGC HAS REVIEWED.

17 Oct 1955

Rebuttal of GSA Letter

1. In an opinion and a memorandum of law which are attached, the Central Intelligence Agency has developed in some detail the affirmative argument believed to support its legal position. However, due perhaps to his not having our memoranda before him at the time of writing, the letter of the Administrator of General Services to the Bureau of the Budget does not meet squarely the issues raised by us. The purpose of this memorandum is to rebut the principal arguments upon which he appears to rely. Paragraph references in parenthesis following various sections below are to the affirmative arguments developed in our memorandum of law.

A. The question of General Services Administration's "preclusive" authority.

2. We believe that the clear-cut authorization by Congress to the Director of Central Intelligence to construct a Central Intelligence Agency building runs parallel to and quite separate from the various enabling authorizations of the Administrator. We believe that the statutory authority running to the Director for the construction of a headquarters building is clear-cut and complete and is not subject to restriction by statutes running to any other branch of the Executive arm of the Government (Paragraphs 1, 20, 22, 27-32). We do not understand the emphasized quotation of "provide" by the Administrator from the text of Public Law 161. If the Administrator intends thereby to indicate a limitation on the

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Director's authority, such a position would be inconsistent with his interpretation of the word "provide" in 40 U.S.C. 341 as giving him a preclusive authority in the field of public building construction. Since the language of section 341 is not free from ambiguous interpretation, we believe that the burden of proof is on the Administrator if he asserts that it has a preclusive effect and there is no indication that this burden of proof has been met. To the contrary. The practice of Congress in authorizing construction and appropriating funds for other public buildings would seem to demonstrate the necessity that the authority of the Administrator to construct each building for which funds are appropriated to another agency be spelled out, unless that Agency is inclined to voluntarily request his assumption of responsibilities. In Public Law 161 there seems to be no ambiguity.

B. The exclusion of the Central Intelligence Agency building from whatever authority the General Services Administration possesses in the public buildings construction field.

3. Section 501 of Public Law 161, which the Administrator seeks to interpret by a reference to the Legislative History, applies in clear, specific and particular terms to the Director of Central Intelligence. The Legislative History is often a convenient source of interpretative guidance when the language of a statute is not clear, but it is certainly not a general practice to seek through this means an "interpretation" of language clear on its face. (Paragraph 1).

4. Were there any question as to the applicability of Section 501 to the Central Intelligence Agency headquarters building, it would seem

that the question could be resolved by reference to the Central Intelligence Agency Act of 1949 which provides in section 10a the authority of the Agency to construct buildings and facilities without regard to <sup>R.S. 3734</sup> ~~that statute~~.

C. The question of General Services Administration's right to operate this building after construction.

5. In his assertion that the proposed Central Intelligence Agency headquarters installation will be a general purpose office building, we believe that the Administrator is begging the question. In our opinion, the special arrangements and facilities required would make it impracticable for the building to be used for general office purposes without substantial and expensive alteration. Our reasons for so believing are set forth in paragraphs 21 and 25 of the attached memorandum of law, whereas the Administrator's reasons for considering it a general purpose office building are set forth only very briefly in his letter and consist only of a recital of certain factors common to all buildings, whether general or special purpose.

6. In our memorandum we have discussed in some detail in paragraphs 11 - 15 the question of General Services Administration's operation of this building after construction. Without necessarily objecting to such operation, we cannot agree that it would automatically come about. The authority of the Administrator to ~~construct~~ <sup>operate</sup> public buildings under Re-organization Plan 18 of 1950, was construed as applying only to buildings then in existence. This situation led to the passage of 40 U.S.C. 490,

a statute which places in the Director of the Bureau of the Budget the authority to effect certain transfers of operation, maintenance and custody of public buildings to the Administrator. This authority of the Director of the Bureau of the Budget is limited by the express terms of the statute and even if this building were not considered to be within one of the exceptions, the transfer is still within the discretion of the Director of the Bureau of the Budget and cannot be required by the Administrator.

7. The views of the Attorney General in previous cases, as those are expressed in our memorandum, would seem to limit considerably the control of any other arm of the Executive Branch over this building after its construction, and, in any case, the question of control over a building after it is in existence would not necessarily decide the question of control during construction.

D. The utilization of the General Services Administration as construction agent.

8. Since this Agency first determined to ask the Congress for authority to construct a headquarters installation, we have worked closely with General Services Administration, as is clear from the report of our Director to the Congress (paragraph 19). We would be happy to use the General Services Administration as construction agent for the building. The position of the Administrator, however, as exemplified in his letter to the Bureau of the Budget, is that he would not act as construction agent, but must be sole authority or will not participate. The relevancy of such participation to <sup>the</sup> lease -  
purchase program is not at all clear.

9. From discussion with the General Services Administration, we have learned that the building approval provision of 40 U.S.C. 341 may be somewhat illusory in that, although it provides for prior approval of both the Administrator and the head of the agency concerned of sketches, plans and estimates, it gives the agency head no authority in connection with the multitudinous changes or compromises that may have to be effected during construction. Although we are sure that the Administrator, like the Director, would seek a jointly acceptable solution of any difficulty that might arise, it is not difficult to predict that many situations will not be, in the eyes of the Director, subject to compromise, charged as he is with the responsibility of protecting intelligence sources and methods from disclosure. Lacking detailed knowledge of the conditions surrounding intelligence operations, and necessarily bound by considerations and policies arrived at in the construction of "general purpose office buildings" for the Government, the Administrator may reasonably feel that he cannot meet the Director's requirements. In such cases as this, where compromise is impossible, the General Services Administration has stated that the Administrator, were he to have the construction authority, would be the final arbiter. From these facts a situation could develop in which the Director would be precluded from fulfilling the responsibilities placed upon him not only by these construction authorities, but by the more general Acts establishing this Agency and imposing upon the Director important functions contributing to the national security.

10. In summary, this Agency has no desire to go into the

construction business. We would be happy to consider the General Services Administration as a possible construction agent and utilize their services if that were the most economical and efficacious way of getting this building constructed. We cannot agree voluntarily, however, that anyone but the Director of Central Intelligence should have the ultimate authority, the final say, in this building's construction, since we do not believe he can meet his responsibilities otherwise. We do not believe that anything presently in the law derogates from these clearly-granted authorities, although we recognize the power of Congress to provide as it sees fit.